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Vendor sues for purchase price. *Held*, (KRUSE, J., dissenting), vendor cannot recover. *Westmoreland Coal Co. v. Syracuse Lighting Co.*, 145 N. Y. S. 420.

The opinion of the court says: "The carrier was for this purpose [transportation] the plaintiff's and not the defendant's agent. \* \* \* Delivery of the coal at the place specified in the contract was required to be made, and then only would the defendant's assent to such appropriation in part fulfillment of the contract be established, therefore title did not pass to the defendant." The case clearly holds, therefore, that delivery was a condition precedent to the passage of title, basing its decision on *McNeal v. Braun*, 53 N. J. Law. 617, 26 Am. St. Rep. 441; *Magruder v. Gage*, 33 Md. 344, 3 Am. Rep. 177; and *Bigler v. Hall*, 54 N. Y. 167. But not one of these cases is authority for the position the court took. KRUSE, J., dissenting, held that there being an appropriation by vendor and an assent by the vendee, by entry on the books, title passed, and since the property was lost through no fault of vendor, the vendee should stand the loss. But even though title had passed the vendor was not discharged of his contract duty to deliver. This was an absolute and unconditional promise which he was under obligation to fulfill. As a broad statement the following cases might be stated as holding that where one contracts to deliver at a specified place, such delivery is a condition precedent to passage of title. *Neimeyer Lumber Co. v. Burlington Ry.*, 54 Neb. 321, 40 L. R. A. 534; *Sneathen v. Grubbs*, 88 Pa. St. 147; *Braddock Glass Co. v. Irwin*, 153 Pa. St. 440; *Laughlin v. Marston*, 78 Wis. 670; *Hanaur v. Bartels*, 2 Colo. 514; *Devine v. Edwards*, 101 Ill. 138.

#### TRIAL—DIRECTING A VERDICT—EFFECT OF REQUESTS BY BOTH PARTIES.—

In an action against a notary public for negligence in taking an acknowledgment, both parties, at the close of the evidence, requested a directed verdict without asking that any of the issues be submitted to the jury. *Held*, that this amounted to a withdrawal of the case from the jury and placed upon the court the duty of determining all matters of fact as well as of law. *Peterson v. Mahon*, (N. D. 1914), 145 N. W. 596.

The question involved in the instant case is one upon which there is an irreconcilable conflict of authority. In several states the rule is well settled that mutual requests for a directed verdict will under no circumstances amount to a waiver of a jury trial or relieve the jury from the duty of determining any and all disputed questions of fact. *Wolf v. Chicago Sign Printing Co.*, 233 Ill. 501; *German Savings Bank v. Bates Addition Imp. Co.*, 111 Iowa 432; *Stauff v. Bingenheimer*, 94 Minn. 309; *National Cash Register Co. v. Booneville*, 119 Wis. 222; *Lonier v. Ann Arbor Savings Bank*, 153 Mich. 253; *Farnum v. Davidson*, 3 Cush. (Mass.) 232. One court at least has taken the view directly opposed to these cases and has held that mutual requests of this kind amount to an absolute submission of the whole case to the court even though special instructions covering disputed matters of fact are requested. *Home Savings Bank v. Woodruff*, 14 N. M. 502. The rule announced in the principal case, which is also the rule in the United States courts, seems to be gaining in favor. It is to the effect that where

both parties move for a directed verdict and do nothing more, they thereby impliedly waive a trial by jury and confer upon the court the power to determine matters both of law and fact. *Empire State Cattle Co. v. A. T. & S. F. Ry. Co.*, 210 U. S. 1, reversing 147 Fed. 457; *Beuttell v. Magone*, 157 U. S. 154; *Patty v. Salem Flouring Mills Co.*, 53 Ore. 350; *Lindquist v. Northwestern Port Huron Co.*, 22 S. D. 298; *Home Fire Ins. Co. v. Wilson*, 159 S. W. (Ark. 1913) 1113. The rule as applied in these cases has, however, the modification that if either party on denial of his motion makes a special request to have certain matters of fact determined by the jury, this rebuts the implied presumption of waiver, and such matters must be submitted to the jury. *Minahan v. Grand Trunk*, 138 Fed. 37; *Kinner v. Whipple*, 198 N. Y. 585; *Duncan v. Great Northern*, 17 N. D. 610; *Victoria First National Bank v. Hayes*, 64 Oh. St. 100. It is said in *Minahan v. Grand Trunk*, *supra*, "The fact that each party asks for a peremptory instruction to find in his favor does not submit the issues of fact to the court so as to deprive the party of the right to ask other instructions, and to except to the refusal to give them, nor does it deprive him of the right to have questions of fact submitted to the jury if issues are joined on which conflicting evidence has been offered." It is submitted that the rule which permits a resort to the jury in all cases where there are disputed facts is the more logical for the reason that a motion for a directed verdict is in effect a demurrer to evidence. As such it would not seem to imply that the party is willing to have the court pass upon the weight of the evidence, since in considering the motion the court cannot look to any of the evidence introduced by the moving party which is favorable to him.

**WILLS—LEGACY—DIVIDENDS ON CORPORATE STOCK.**—The stock of a corporation was given in trust to pay the income to the testator's widow for life, with remainder to a daughter absolutely. After the testator's death the corporation declared an extra dividend of 100 per cent. on the capital stock, for the payment of which dividend securities purchased by the corporation out of its cumulative profits were sold. *Held*, that such extra dividend was not income but that it constituted part of the corpus of the trust estate. *Foard v. Safe Deposit & Trust Company of Baltimore* (Md. 1914), 89 Atl. 724.

There are three conflicting rules upon the question of how distributions made by a corporation during the continuance of a life estate should be apportioned between the life tenant and the remainderman. The so-called Massachusetts rule is that stock dividends declared out of earnings accumulated during the testator's lifetime go to the remainderman, and cash dividends go to the life tenant. *Minot v. Paine*, 99 Mass. 108; *Gibbons v. Mahon*, 136 U. S. 549; *Smith v. Dana*, 77 Conn. 543; *De Koven v. Alsop*, 205 Ill. 309. This rule is somewhat difficult of application for the reason that before it can be applied it is necessary to ascertain whether the distribution by the corporation is from earnings or whether it represents a reduction or change of the form of capital. The Pennsylvania rule, the one followed by the principal case, is that both stock and cash dividends are appor-